F. M. S. REPORTS.

[ORIGINAL CIVIL JURISDICTION]

HEREFORD, J.

January 13, 1934.

RAMASAMY KRISHNAN
A. L. A. SUPPIAH CHETTY .....Plaintiffs.

vs.

STATE OF NEGRI SEMBILAN
LIM CHENG .....Defendants.

[NEGRI SEMBILAN CIVIL SUIT No. 58 of 1933]

The Public Authorities Protection Enactment, 1929, section 2—Meaning of the word "person" therein.

The word "person" as used in the Public Authorities Protection Enactment, 1929, does not apply to the State.

The preamble to that Enactment appears to refer to the protection of individual officers, and had the intention been to protect the State, as well as the officer, it would have been easy to make it clear by the use of somewhat different language.

M. E. A. Farr for the plaintiffs.

M. Morrison for the first defendant.

M. Ramalingam for the second defendant.

HEREFORD, J.—This is an action brought by the plaintiffs against the State of Negri Sembilan and another claiming damages for a tort alleged to have been committed by an officer of the State. When the case was called up before me Mr. Farr, for the plaintiffs, informed me that the plaintiffs and the second defendant had settled the matter out of Court and asked that the plaintiffs be allowed to withdraw their suit and pay the 1st defendant's costs.

Mr. Morrison, who appeared for the State, then asked that judgment be entered for the 1st defendant and that the 1st defendant be awarded costs as between solicitor and client by virtue of section 2 (iii) of "The Public Authorities Protection Enactment, 1929." Section 2 of this Enactment reads as follows:—

> "Where any action prosecution or other proceeding is commenced against any person..... the following provisions shall have effect:..... (iii) Wherever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client."

Mr. Morrison argued that in order to ascertain the meaning of the word "person" recourse must be had to the provisions of "The Interpretation and General Clauses Enactment, 1932," section 2 of which enacts that "in every written law the word 'person' unless there is something in the subject or context inconsistent with such construction shall include any company or association or body of individuals whether incorporated or not." That definition, he submitted is wide enough to include the State and as there is nothing in "The Public Authorities Protection Enactment, 1929" inconsistent with such construction, the word 'person' in section 2 of that Enactment includes the State, which is therefore in this case entitled to have its costs taxed as between solicitor and client.

The question here raised has been considered in the following cases in the Federated Malay States:—

In *The Chief Secretary to Government, Federated Malay States* v. *Soo Choon Wee*, 3 F.M.S.L.R. 126, the learned trial Judge Farrer-Manby, J. C., held that a similar protection extended to a person by section 45 of the Customs Enactment did not extend to the Chief Secretary to Government; his decision was over-ruled by the Court of Appeal consisting of Woodward, C. J. C., and Reay, J. C.; Reay, J. C., holding that the protection did so extend, Woodward, C. J. C., appearing to think that it did but deciding the appeal on other grounds.

In *Anglo-French Trading Company* v. *The Chief Secretary to Government, Federated Malay States*, 5 F.M.S.L.R. 166, Sproule, C. J. C., held that the protection extended by section 6 of "The Export of Rubber (Restriction) Enactment, 1922," the terms of which were similar to section 45 of the Customs Enactment, did extend to the Chief Secretary to Government, and at page 172 of his judgment says:—

> "I held that not only the servant, and not only the Chief Secretary to Government of the Federated Malay States and the Government of a State are, each and all, persons falling within the protection of section 6."

This case was decided on the 19th of March, 1925.

In *C. M. Naested* v. *The State of Perak*, 5 F.M.S.L.R. 185, this question was not raised at the original trial but was allowed to be raised on appeal; and the Court of Appeal, which consisted of Woodward, C. J., Farrer-Manby, J., and Deane, J., held unanimously that the protection afforded to persons by section 130 of "The Land Enactment, 1911" did not extend to the State. Section 130 of the Land Enactment reads as follows:—

> "PART IX.
>
> PROTECTION OF OFFICERS.
>
> 130. (i) No action shall be brought against any person for anything done or *bona fide* intended to be done in the exercise or

supposed exercise of the powers given by this Enactment, or by any rules made thereunder:—

(a) Without giving to such person one month's previous notice in writing of the intended action, and of the cause thereof;

(b) After the expiration of three months from the date of the accrual of the cause of action:

(c) After tender of sufficient amends."

The Court of Appeal held that in considering the question of whether the word "person" included the State, the wording of the whole of Part IX must be taken into consideration including the heading "Protection of Officers." At page 194, Woodward, C. J., says:—

> "The words in sub-section (ii) malice, negligence and absence of reasonable and probable cause refer to the conditions of mind in an individual,.....and although there is something to be said for the view that in an action against the State, the malice or negligence which the plaintiff would have to prove would be the malice or negligence of the officer, yet the language of the whole section, read with the heading 'Protection of Officers' in its plain meaning indicates only an intention to protect individuals."

And again:—

> "Had the intention been to protect the State, as well as the officer, it would have been easy to make that clear by the use of somewhat different language. As the section stands I think it is 'repugnant to the context' to read the word 'person' as including the State."

With regard to this judgment of Woodward, C. J., it is, I think, important to note that he states in his judgment that in the case of *the Chief Secretary to Government, Federated Malay States* v. *Soo Choon Wee*, already referred to, he had expressed a different opinion in an *obiter dictum*.

At page 196. Woodward. C.J.. refers to the judgment delivered in the case of *Anglo-French Trading Company* v. *The Chief Secretary to Government. Federated Malay States*, already referred to, and expresses a doubt whether if Sproule, C. J. C.. had had before him the case of *Attorney-General Straits Settlements* v. *Pang Ah Yew*, (1925) A.C. 555, he would come to the conclusion he arrived at with regard to the section in question. It may therefore, I think, be taken as settled that the case of *Naested* v. *The State of Perak*, overruled the decision in the *Anglo-French Trading Company's* case, and is a binding authority in respect of the law as it stood in the year 1925.

But it was argued that the state of the law now is not the same as it was in 1925. Prior to the passing of "The Public Authorities Protection Enactment, 1929," there was no general provision for the protection of public authorities, but the relevant sections were to be found scattered about in various Enactments in which it was thought expedient to insert them. In 1929 these various sections were repealed and the Public Authorities Protection Enactment enacted: and the law was further altered in 1928 by the repeal of Chapter XXX (sections 393 to 405) of the Civil Procedure Code and the enactment of "The Government Suits Enactment, 1928," and it was argued that the joint effect of these two Enactments was to limit the rights of the subject as against the State, and further, as I understand, that as it is no longer necessary to submit a plaint to the Chief Secretary or the Resident for endorsement the State had availed itself of the protection afforded by "The Public Authorities Protection Enactment, 1929," and that in enacting that Enactment it had deliberately altered the law. It was urged that there is nothing in the Public Authorities Protection Enactment which is any way repugnant to including in the definition of 'person' the word 'State.' But, in my opinion, there is no substantial difference between the wording of that Enactment and the wording of section 130 of the Land Enactment except that the heading "Protection of Officers" does not appear. In the Enactment the place of that heading is taken by these words:—

> "An Enactment to generalize and amend certain Enactments for the protection of persons acting in the execution of statutory and other public duties."

It is true that the word 'persons' is here substituted for the word 'officers' but the rest of the heading appears to me clearly to contemplate the protection of individual officers. To refer to the State as acting in the execution of statutory and other public duties appears to me to be little short of meaningless.

Now it is a well established principle of law that "where a word of doubtful meaning has received a clear judicial interpretation, the subsequent statute which incorporates the same word or the same phrase in a similar context, must be construed so that the word or phrase is interpreted according to the meaning that has previously been assigned to it." See the judgment of Viscount Buckmaster in *Barras* v. *Aberdeen Steam Trawling and Fishing Company*, (1933) A.C. 402. at page 411: and James, L. J., in the case of *Ex parte Campbell*, L.R. 5 Ch. 703, says:—

> "Where once certain words in an Act of Parliament have received a judicial construction in one of the Superior Courts, and the Legislature has repeated them

without any alteration in a subsequent statute, I conceive that the Legislature must be taken to have used them according to the meaning which a Court of competent jurisdiction has given to them."

Again in *Barlow* v. *Teal*, 15 Q.B.D. 403, Lord Coleridge, C. J., says:—

"Where cases have been decided on particular forms of words, in Courts, and Acts of Parliament use those forms of words which have received judicial construction, in the absence of anything in the Acts shewing that the Legislature did not mean to use the words in the sense attributed to them by the Courts, the presumption is that Parliament did so use them."

And the case of *Greaves* v. *Tofield*, 14 Ch.D. 563, James, L. J., says:—

"If an Act of Parliament uses the same language which was used in a former Act of Parliament referring to the subject, and passed with the same purpose, and for the same object, the safe and well-known rule of construction is to assume that the Legislature when using well-known words upon which there have been well-known decisions uses those words in the sense which the decisions have attached to them."

Applying this principle to this case, it seems to me to be an irresistible conclusion that the word 'person' as used in the Public Authorities Protection Enactment does not apply to the State. The wording of the Enactment is substantially similar; the preamble, if I may so call it, if read in the ordinary sense of words appears to refer to the protection of individual officers; and I do not think that the substitution of the word 'persons' in that preamble for the word 'officers' in the heading to section 130 of the Land Enactment, is sufficient to show that the Legislature did not mean to use the word in the sense attributed to it by the Courts. I adopt with respect the words employed by Woodward, C. J., in *Naested's* case:—

"Had the intention been to protect the State, as well as the officer, it would have been easy to make that clear by the use of somewhat different language."

In my opinion, therefore, the word 'person' in section 2 of this Enactment does not include the State, and in that case the 1st defendant is not entitled to have his costs taxed as between solicitor and client and the order will be that they be taxed as between party and party.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]

BURTON, J.

March 29, 1934.

PUBLIC PROSECUTOR.....Appellant

vs.

MANAGER, GREAT EASTERN PARK, KUALA LUMPUR,.....Respondent

[SELANGOR MAGISTRATES' CRIMINAL APPEAL No. 4 of 1934]

The Theatres Enactment, 1910, Section 9 sub-section (iii)—Breach of conditions of licence —Responsibility of licensee.

Only a licensee can be convicted under the provisions of section 9, sub-section (iii) of the Theatres Enactment, 1917.

It is impossible for the licensing officer to create an offence against a stranger by a condition endorsed on a licence to which he is not a party.

It is inconsistent with the scheme of this Enactment that the legislature intended that the licensee should be responsible for a breach committed by himself, and not by his servants.

R. C. Cussen, Deputy Legal Adviser, for the appellant.

J. T. Tesswill for the respondent.

Cur. Ad. Vult.

BURTON, J. — In December, 1933, A. Ponnampalam was the Manager of the Great Eastern Park, Kuala Lumpur. On 30th. December, 1933, a licence was issued to the "Manager, Great Eastern Park" to carry on a Chinese Wayang Performance for three days, subject to a condition endorsed on the back:—

"This licence is subject to the condition that all metal instruments including gongs and cymbals and drums and horns electric or otherwise shall not be used."

On 30th December, at 4.35 p.m., two Police Officers visited the Park, went inside the Cantonese Wayang and found some persons seated on the stage away from the audience playing cymbals. The Manager, Great Eastern Park, Kuala Lumpur was charged with a breach of his licence under section 9 (iii) of the Theatres Enactment and acquitted. The Public Prosecutor now appeals against this acquittal.

The Magistrate held that "every person" in section 9(iii) does not necessarily refer to the holder of the licence, that the two musicians themselves might have been prosecuted and that the Manager should have been charged with abetting them. If he held this view, the Magistrate should not have acquitted but should have altered the charge in accordance with section 171(h) of the Criminal Procedure Code.

Section 9(iii) of the Theatres Enactment provides that:—

"Every person who shall commit any breach of the conditions of the licence shall